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9 Attorneys for Plaintiff  
10 GUARDIAN MEDIA  
11 TECHNOLOGIES, LTD.

12 **IN THE UNITED STATES DISTRICT COURT**  
13 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

14 GUARDIAN MEDIA  
15 TECHNOLOGIES, LTD.,

16 Plaintiff,

17 v.

18 PHILIPS ELECTRONIC NORTH  
19 AMERICA CORPORATION and  
20 TOSHIBA AMERICA CONSUMER  
21 PRODUCTS, L.L.C. and TOSHIBA  
22 AMERICA, INC.,

23 Defendants.

FILED

2008 OCT 10 PM 2:56

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY RMH DEPUTY

'08 CV 1859 W RBB

Case No. \_\_\_\_\_

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

24 **COMPLAINT FOR PATENT INFRINGEMENT**

25 Plaintiff GUARDIAN MEDIA TECHNOLOGIES, LTD. files this Original Complaint  
26 against the above-named Defendants, PHILIPS ELECTRONIC NORTH AMERICA  
27 CORPORATION, TOSHIBA AMERICA CONSUMER PRODUCTS, L.L.C., and TOSHIBA  
28 AMERICA, INC. (collectively, "Defendants") alleging as follows:

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COMPLAINT FOR PATENT INFRINGEMENT

## **I. THE PARTIES**

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2  
3 1. Plaintiff GUARDIAN MEDIA TECHNOLOGIES, LTD. ("Guardian") is a Texas  
4 limited partnership with a mailing address at 3801 N. Capital of Texas Highway, E240-303,  
5 Austin, Texas 78746.

6 2. Defendant PHILLIPS ELECTRONIC NORTH AMERICA CORPORATION  
7 ("Phillips") is a Delaware corporation with its principal place of business at 1251 Avenue of the  
8 Americas, New York, New York 10020. Defendant Philips can be served with process by  
9 serving its registered agent, State of California Corporation Service Company, 2730 Gateway  
10 Oaks Drive, Suite 100, Sacramento, California 95833.

11 3. Defendant TOSHIBA AMERICA CONSUMER PRODUCTS, L.L.C. is a limited  
12 liability corporation organized under the laws of New Jersey, having its principal place of  
13 business in New Jersey. Defendant Toshiba America Consumer Products' can be served with  
14 process by serving its registered agent, CT Corporation System, 350 N. St. Paul Street, Dallas,  
15 Texas 75201.

16 4. Defendant TOSHIBA AMERICA, INC. is a Delaware corporation with its  
17 principal place of business at 1251 Avenue of the Americas, New York, New York 10020.  
18 Defendant Toshiba America, Inc. can be served with process by serving its registered agent, CT  
19 Corporation System, 818 West Seventh Street, Los Angeles, California 90017.

## **II. JURISDICTION AND VENUE**

20  
21 5. This is an action for infringement of a United States patent arising under 35 U.S.C.  
22 §§ 101 *et seq.* This Court has subject matter jurisdiction of the action under Title 28 U.S.C.  
23 §1331 and §1338(a).

24 6. The Court has personal jurisdiction over Defendants and venue is proper pursuant  
25 to 28 U.S.C. §§ 1391(b), (c), and 1400(b). Defendants have substantial contacts with the forum  
26 as a result of pervasive business activities conducted within the State of California and within this  
27 District, including but not limited to the sale and distribution of various electronic devices.  
28

1 Further, Defendants have committed acts of patent infringement, directly and/or through agents  
2 and intermediaries, by shipping, distributing, importing, offering for sale, and/or selling certain  
3 infringing products in California and, particularly, the Southern District of California.  
4 Defendants have purposefully and voluntarily placed one or more of their infringing products into  
5 the stream of commerce with the expectation that they will be purchased by consumers in the  
6 Southern District. These products have been purchased by consumers in this District.  
7

### 8 **III. BACKGROUND FACTS**

9 7. On May 29, 1990, United States Patent No. 4,930,158 ("the '158 patent") was duly  
10 and legally issued by the United States Patent and Trademark Office to Peter S. Vogel for an  
11 invention entitled "Selective Video Playing System," a true and correct copy of which is attached  
12 hereto as Exhibit "A", and incorporated herein by reference.

13 8. Guardian owns the entire right, title, and interest in and to the '158 patent.

14 9. The '158 patent claims inventions that enable people to program certain home  
15 electronic devices so the devices will not display material users deem objectionable. This  
16 patented technology commonly is referred to as "parental control" technology.

17 10. The '158 patent has expired, but Defendants are still liable for past acts of  
18 infringement that occurred before the expiration of the '158 patent.  
19

### 20 **IV. PATENT INFRINGEMENT OF THE '158 PATENT**

21 11. The allegations of paragraphs 1-10 are repeated and re-alleged as if fully set forth  
22 herein.

23 12. Defendants have directly infringed, actively induced the infringement of, and/or  
24 contributed to the infringement of one or more claims of the '158 patent by importing, making,  
25 using, selling, and/or offering to sell products incorporating the technology covered by the '158  
26 patent prior to its expiration.  
27  
28

## V. PRAAYER FOR RELIEF

a. Judgment that one or more claims of United States Patent No. 4,930,158 have been infringed, either literally and/or under the doctrine of equivalents, by one or more Defendants and/or by others to whose infringement Defendants have contributed and/or by others whose infringement has been induced by Defendants;

c. That Defendants' infringements be found to be willful from the time that Defendants became aware of the infringing nature of their respective products, and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;

e. That this Court declare this an exceptional case and award Guardian its reasonable attorney's fees and costs in accordance with 35 U.S.C. § 285; and

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1 DATED: October 10, 2008

NEIL, DYMOTT, FRANK,  
MCFALL & TREXLER  
A Professional Law Corporation

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4  
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mneil@neildymott.com  
6 Hugh A. McCabe, Esq.  
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7 David P. Hall, Esq.  
8 dhall@neildymott.com

9 *Attorneys for Plaintiff*  
10 GUARDIANMEDIA  
11 TECHNOLOGIES, LTD

12 **VI. JURY DEMAND**

13  
14 Plaintiffs demand a trial by jury pursuant to Rule 38 of the Federal Rules of Civil  
15 Procedure on all issues presented in this Complaint.

16 DATED: October 10, 2008

NEIL, DYMOTT, FRANK,  
MCFALL & TREXLER  
A Professional Law Corporation

17  
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25 GUARDIANMEDIA  
26 TECHNOLOGIES, LTD  
27  
28

JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

GUARDIAN MEDIA TECHNOLOGIES, Ltd.

(b) County of Residence of First Listed Plaintiff Austin, TX  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Neil Dymott, 1010 2nd Avenue, Suite 2500, San Diego, CA 92101

## DEFENDANTS

PHILIPS ELECTRONIC NORTH AMERICA CORPORATION

County of Residence of First Listed Defendant New York

(IN U.S. PLAINTIFF CASES ONLY) DISTRICT COURT OF CALIFORNIA

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'08 CV 1859 W RBB

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
35 U.S.C. Section 101Brief description of cause:  
Patent Infringement

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

155963

AMOUNT

\$300

APPLYING IFP

JUDGE

MAG. JUDGE

10/10/08

CR

**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 155963 - MB**

**October 10, 2008  
14:55:12**

**Civ Fil Non-Pris**

USAO #: 08CV1859 CIVIL FILING  
Judge.: THOMAS J WHELAN  
Amount.: \$350.00 CK  
Check#: BC101130

**Total-> \$350.00**

FROM: GUARDIAN MEDIA TECH VS  
PHILIPS ELECTRONICS